

NRO REVIEW COMPLETED

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ISSUES FOR PRESIDENTIAL CONSIDERATION RELATING TO U.S. FOREIGN INTELLIGENCE ACTIVITIES

NOTE: The issues are grouped by category, and the list includes, and expands upon, the issues set forth in the Presidential "decision book" prepared for his use in Colorado. Issues from the "decision book" are not listed in the same order as they appear in the book, but are identified by page number reference.

A. FIRST ORDER ISSUES

1. Is this the time for a major reorganization of the Intelligence Community on initiative of the Executive Branch?

DCI Recommendation: No. The issues involved in organization and management of the Community are complex and need much more careful study. A new DCI will shortly take office and both the Secretary of Defense and his Deputy Secretary handling intelligence matters are new appointees. These officials need time to develop their own ideas, to examine the issues and to make their recommendations to the President. Also, any such proposals would have to be taken to the Congress, where consideration in the present atmosphere would pose major problems.

2. If the decision on the above issue is "No", should Executive Branch positions be prepared against the event that the Congressional investigations will result in reorganization proposals?

DCI Recommendation: Yes. Staffing actions should continue concerning reorganization proposals. Issues which do not involve reorganization should be decided and appropriate Executive Branch action taken.

3. What action can the Executive Branch take to aid in restoring confidence in the U.S. Foreign Intelligence Community?

DCI Recommendation: As the first step, issuance of restrictions on the Intelligence Community such as are contained in the draft Executive Order which has been under White House review will contribute to restoration of confidence. Other possible measures are discussed under the issues related to oversight.

B. REORGANIZATION OF THE INTELLIGENCE COMMUNITY

4. Should the charter of the Community institute greater accountability? (Presidential "decision book" Page I-6)

Comment: As it is treated in the President's "decision book" this issue would be better stated as: Is it desirable to move now to streamline the chain of command of the Intelligence Community?

DCI Recommendation: As indicated in the comment on Issue 1, this is not considered a propitious time for a major reorganization of the Intelligence Community. Should the President decide, however, that a reorganization of the Community is to be undertaken this year (and Congress in any case appears to be moving in that direction), there are steps that should be taken to streamline the Community structure. The authorities of the DCI should be made commensurate with his responsibilities and his relationships with the Department of Defense should be clarified. On the other hand, the chain of command for covert action is already quite clear and there is no reason to change it.

5. Should any new charter for the Intelligence Community be primarily statutory or administrative? (Presidential "decision book" Page I-8)

DCI Recommendation: Proposals concerning a Central Intelligence Agency charter and a National Reconnaissance Office charter are at Tabs C and D. As for a charter applicable to the Intelligence Community as a whole, this is presently covered by the National Security Council Intelligence Directives. Any changes resulting from the ongoing investigations and Executive Branch review should be reflected in NSCID No. 1.

6. How should accountable leadership of the Intelligence Community be provided?

Comment: This is phrased in the Presidential "decision book" as follows: "What type of leadership does the Intelligence Community require (both internally and externally) to efficiently provide effective leadership on a timely basis? Which person or persons shall be held accountable for leadership of the Intelligence Community?" (Page III-1)

DCI Recommendation: Leadership must be provided by two persons: the President and his senior U.S. foreign intelligence officer, who must function both as a close adviser to the President and as an Intelligence Community leader with authorities that match his responsibilities. These authorities must include sufficient budgetary authority to make his leadership effective.

7. Should the senior U.S. foreign intelligence officer also be the operating head of the Central Intelligence Agency?

Comment: This issue was not cited as an issue in the Presidential "decision book", but it--and the following three issues--are considered of critical importance in formulating the future structure of the Intelligence Community.

DCI Recommendation: Yes. It is essential that the senior U.S. foreign intelligence officer not be separated from his operating base. If he is to be the intelligence adviser to the President, he must not be separated from the analytical base responsible for the production of national intelligence. While the DCI can be directed to delegate day-to-day management of the CIA to a deputy, he must retain operational and policy control of the Agency or he will become a powerless "adviser" on the White House staff.

8. Should the DCI be a member of the NSC, or an adviser to the NSC?

DCI Recommendation: An adviser to the NSC.

9. Should the DCI be the Chairman of the NSC Intelligence Committee?

DCI Recommendation: No, not as the NSCIC is now constituted.

10. Should the DCI be the Chairman of the 40 Committee (or its equivalent)?

DCI Recommendation: No, he should continue to be a member as at present.

11. What principles should be important to you in developing an overall structure to work with Congress on intelligence matters? (Presidential "decision book" Page II-17)

DCI Recommendation: Because oversight activity must be conducted for the most part outside of the public domain, the oversight committees will feel the need to dig more deeply into matters than would be the case if all the normal mechanisms (press, interest groups, other Members of Congress, etc.) were not blocked from access. At the same time, these committees should not impinge upon constitutional prerogatives not shared with the Congress.

If the committees are to back off from a "fully and currently informed" concept and if the oversight structure is to work, the Executive Branch must be prepared to make a number of concessions beyond the normal Executive Branch/Congressional relationship.

Access to sensitive intelligence sources and methods carries with it a special responsibility. It must not be overlooked that the legislation that established the Joint Committee on Atomic Energy, which is cited as the model for a committee that can keep secrets, provides criminal penalties for the unauthorized release of Restricted Data. A strengthened oversight structure in the Congress would provide an opportunity to close a serious gap in the criminal laws of the United States in regard to protecting intelligence sources and methods.

It should be insisted that the Congress enact and enforce rules designed to ensure responsible Congressional handling of sensitive intelligence information.

The oversight structure should be limited to the minimum needed to do the job and to assure the Nation of Congressional watchfulness over intelligence. This structure should exercise exclusive jurisdiction, and the rules of the Congress should be modified to restrict access to sensitive intelligence information.

Sensitive intelligence information should not be published by Congressional committees at their sole initiative. Any one of a number of formulas for prior consultation that provides an opportunity for the eventual assertion of Executive Privilege would be acceptable.

Any proposals to require prior approval of committees for covert action or other high-risk activities should be rejected. Instead, there should be a direct and special channel through which Congressional committees or their members can make their views known to the President.

12. What mechanism would best provide control over intelligence resources? (Presidential "decision book" Page III-7)

DCI Recommendation: Given the present organization of the Community and the relationships between the DCI and Department of Defense agencies, control over intelligence resources is best exercised through use of an Executive Committee or Committees chaired by the DCI. The present EXCOM arrangement applies only to the National Reconnaissance Program. A better arrangement would be a single senior EXCOM for all national collection programs. Short of this, there should be an additional EXCOM charged with responsibility for program and resource decisions for the SIGINT program. The use of EXCOMs avoids the need for any basic change in present procedures for budget development and approval within the Department of Defense, which has the bulk of intelligence resources, and still gives the DCI an important role in the programs and budgets for major technical collection systems.

13. Should the collection organizations be consolidated to improve quality, simplify management, and achieve greater cost effectiveness? (Presidential "decision book" Page III-9)

DCI Recommendation: Supervision under an EXCOM arrangement and continuation of actions already under way to improve the statement of requirements for collection will do more to enhance effectiveness of the collection effort than would attempts at consolidation. Diversity of effort is of great value in operations against difficult intelligence targets, and unwarranted duplication can be avoided by actions far less disruptive than consolidation. The separate nature of the technical collection tasks and human source collection efforts is such that greater cost effectiveness could not be expected from consolidation. Merging minor collection activities would not achieve significant economies.

14. Can the production (analysis) capability of the Intelligence Community be improved through "organizational" realignments? (Presidential "decision book" Page III-11)

DCI Recommendation: No. This issue is generally discussed in terms of resource savings resulting from the elimination of duplicative production arrangements. With minor exceptions, the existing alignments reflect the proper national and departmental interests of the members of the Intelligence Community. It is imperative that the DCI provide the President, the National Security Council, and the Congress with authoritative and reliable assessments of foreign events. This capability can be exercised only on the basis of analysis under the immediate control of the DCI and independent of other departments. Moreover, on critical national intelligence questions, competition in analysis is desirable and should be encouraged. The best approach to improving the quality of analysis and production is to provide resources adequate to satisfy the full range of the substantive needs for national intelligence.

C. THE SCOPE AND CONTROL OF COVERT ACTION

15. Do the Community's statutory and administrative charters adequately deal with covert action? (Presidential "decision book" Page I-8)

DCI Recommendation: Yes. The National Security Act of 1947 delegates to the NSC the authority to assign certain action responsibilities related to intelligence. By the NSCID's and the implementing DCID's and Decision Memoranda, particularly NSDM-40, responsibility for the planning, approval, and execution of covert action has been adequately established. The current legislative requirement to brief six Congressional committees on every covert action has proved to be so insecure that it has obstructed effective covert action. This could be remedied by the creation of a new legislative mechanism such as a single joint Congressional committee with exclusive oversight responsibility, at least for CIA.

16. How can adequate deliberation of covert action proposals be assured? (Presidential "decision book" Page II-16)

DCI Recommendation: Such deliberation can be assured by reinstituting regular 40 Committee meetings and by formalizing the process for excepting specific covert action proposals from 40 Committee jurisdiction in those rare cases when it may be deemed advisable. In addition to the formal 40 Committee deliberation process, there should continue to be informal interdepartmental coordination as well as coordination with Ambassadors or, where appropriate, overseas military commanders. Consultation with and advice from the DDI should also continue to be part of the pre-40 Committee staffing process.

17. Should the covert action capability and possibly all clandestine activity be separated from the CIA? (Presidential "decision book" Page III-13)

DCI Recommendation: No. Separating covert action responsibility from CIA would in no way improve Executive or legislative branch oversight. It could involve duplication and risky inefficiency as covert action invariably involves using many of the same contacts and techniques as clandestine intelligence collection. Responding to the last part of the question, so long as we have a Central Intelligence Agency, clandestine activities abroad constitute a function that should be conducted by that central service. There is an interdependency of analysis and clandestine collection. The former benefits from propinquity with the collection effort in evaluating the product, while the collector needs guidance from the analyst in determining priorities.

D. THE NEED FOR STATUTORY OR ADMINISTRATIVE RESTRICTIONS ON INTELLIGENCE ACTIVITIES

18. Should the jurisdictional arrangements between the CIA and the FBI be revised? (Presidential "decision book" Page II-I)

DCI Recommendation: No. The 1966 Letter of Agreement between the two agencies is a clear basis for effective relations between the CIA and the FBI. The pending NSCID No. 9 and Executive Order on Domestic Activities, which are both consistent with the 1966 agreement, spell out in greater detail some of the relationships in a useful manner. NSCID No. 9 would establish the authority for CIA operations [REDACTED]

STATINTL

[REDACTED] CIA's collection responsibility is and should continue to be restricted to foreign intelligence.

19. What substantive restrictions should be placed on intelligence activities other than the FBI? (Presidential "decision book" Page II-6)

DCI Recommendation: The provisions of the Executive Order now in preparation, which will prohibit or limit the activities of intelligence agencies other than the FBI, adequately cover this issue. Because some of the listed restrictions will be directed at activities that are essential to a law enforcement agency, limitations on activities of the FBI will be handled separately. The restrictions on intelligence agencies will limit: activities directed at United States citizens; activities that may be conducted within the United States; electronic surveillance; examination of United States mail; access to Federal income tax returns; secret infiltration of organizations of U.S. citizens; human drug experimentation; participation in or support of law enforcement activities; and assignment of intelligence agency personnel to other Government agencies.

20. Should there be exceptions to restrictions on the activities of intelligence agencies permitting them to engage in certain activities directed at United States citizens?

Comment: The question above combines two issues from the Presidential "decision book."

a. "Whether to include an exception which would allow the collection, analysis and dissemination of information on the domestic activities of U.S. citizens reasonably believed to be involved in international terrorist or narcotics activities or working in collaboration with a foreign nation or organization, but only if collected abroad or from foreign sources." (Page II-8)

b. "Whether to adopt an exception which would permit sharing of information on domestic activities of U.S. citizens among intelligence agencies or other Federal agencies under guidelines of the Attorney General." (Page II-10)

DCI Recommendation: Yes. For example, intelligence agencies should be permitted to collect, analyze, and disseminate information on the domestic activities of U.S. citizens reasonably believed to be involved in international terrorist or narcotics activities or working secretly in collaboration with a foreign nation or organization, provided such information is collected abroad or from foreign sources. They should also be permitted to share information on the domestic activities of U.S. citizens with other Federal agencies properly concerned with such activities, but only under guidelines to be issued by the Attorney General.

E. THE NEED TO DEFINE SYSTEMS OF OVERSIGHT--EXECUTIVE, LEGISLATIVE AND PUBLIC

21. Should a new Congressional/Executive relationship provide for greater Executive Branch accountability to Congress? (Presidential "decision book" Page I-11)

DCI Recommendation: Yes. Such accountability is an essential ingredient of restoring public confidence. The Executive must work to establish relationships with committees that have exclusive oversight and that can operate under effective rules to ensure the responsible handling of sensitive information. If members of such committees are to operate in a credible fashion as surrogates for others, they must receive, on a voluntary basis, sensitive information that is not available to the press, interest groups, or other Members of Congress.

22. Is oversight within the Intelligence Community adequate and effective? (Presidential "decision book" Page II-12)

DCI Recommendation: Oversight within the Community is being enhanced by upgrading the role of Inspectors General in various elements of the Community and by giving greater attention to Inspector General activities. A Community-wide Inspector General would require additional authority to be vested in the DCI. Current efforts of the Congress and the changed attitude within the Executive Branch will provide more than enough oversight for the Community. The problem of the future may be to protect the Community from being so over-overseen as to be hamstrung.

23. Does effective oversight call for a mechanism outside the Intelligence Community to advise the President on propriety? (Presidential "decision book" Page II-13)

DCI Recommendation: No. The proposed Executive Order on restrictions applicable to the Intelligence Community or some similar Congressional legislation would provide the framework for effective action within the Intelligence Community, including clear provision for reporting to the Attorney General on any instances of impropriety.

24. Would public confidence in Executive oversight be enhanced by use of non-Government overseers? Should an outside advisory board be given intelligence oversight responsibilities and, if so, should it be the PFIAB? (Presidential "decision book" Page II-15)

DCI Recommendation: No. While a group of non-Government overseers might serve some cosmetic purpose, no truly practical role is seen. The PFIAB, in particular, should not be put in an Inspector General role. In view of the expected continuing Congressional interest in oversight and the strengthened role of Inspectors General in Intelligence Community agencies, public oversight is not considered either necessary or desirable.

25. What should be your substantive position concerning intelligence oversight committees? (Presidential "decision book" Page II-21)

DCI Recommendation: In principle, it is up to the Congress to put its house in order, but in so doing, it should recognize that Executive as well as legislative prerogatives are involved.

It does not take six committees of Congress to exercise oversight of CIA. The proliferation of sensitive information must stop and the number of committees involved should be reduced.

The nation should not be required to rely exclusively upon the wisdom and restraint of individual Members to protect sensitive intelligence information provided to the Congress. The rules of Congress should make it clear that access to especially sensitive matters will be restricted to the agreed upon committee structure and should provide explicit sanctions for violation of the rules.

(See response to Issue 11 for additional points.)

26. In what manner should the intelligence budget be displayed to Congress? (Presidential "decision book" Page II-22)

DCI Recommendation: The answer to this question depends to a degree on future organizational arrangements for the Intelligence Community. If effective authority over the intelligence budget or a major portion of it

were to be consolidated in the DCI, he could be held responsible for displaying and justifying all intelligence costs. If present arrangements are to be maintained, CIA, Defense, and other departments and agencies with intelligence programs will present and display budgets for their programs more or less as at present.

Within the present legal framework, a decision could be made to submit to the Congress a separate classified annex covering the intelligence budget. This annex would be prepared by OMB concurrently with the Federal Budget and could be made available to the appropriate committees of Congress for their consideration.

There has been some thinking within the Congressional committee staffs about the possibility of having an annual or semi-annual Congressional authorization for intelligence appropriations. The President should not himself make such a proposal. If, however, this idea were combined with the maintenance of a secret appropriations process, some arguments advanced by proponents of an open budget would be effectively met without revealing exact budgetary details. Such a process would, however, have the enormous disadvantage of causing an annual Congressional debate on the size and scope of the intelligence program and offer a ready-made opportunity for passage or restrictive riders on the major issue of the moment.

27. To what extent is public oversight appropriate? (Presidential "decision book" Page II-27)

DCI Recommendation: Public oversight, beyond that expected to be provided by the Congress, is not considered either appropriate or necessary.

F. INTELLIGENCE SUPPORT TO THE CONGRESS

28. What substantive intelligence should be sent to Congress, and what official should be responsible for making such determinations? (Presidential "decision book" Page II-23)

DCI Recommendation: Conclusions reached in the Presidential "decision book" on this subject are concurred in. Specifically, it is believed that:

a. Legislation on this subject would raise serious Constitutional questions.

b. The Executive Branch should give more systematic attention to the growing needs of the Congress for information.

c. The flow of intelligence information to the Congress should be centralized under the DCI.

29. Under what ground rules should the Congress be provided substantive intelligence? (Presidential "decision book" Page II-26)

Comment: In context, this issue appears to refer only to the ground rules under which the Congress can make public substantive intelligence provided to it.

DCI Recommendation: The only acceptable arrangement is that the Executive Branch continue to control the declassification of classified substantive intelligence. This in turn requires Congressional acceptance, collectively and individually, or the Executive's security and classification system, and hence is part of the larger issue of how Congress polices itself. A provision for appeal to the President would not be inconsistent with this position.

G. THE NEED TO REVISE SYSTEMS FOR CLASSIFICATION AND THE PROTECTION OF INTELLIGENCE SOURCES AND METHODS

30. To what extent should the existing classification system be revised? (Presidential "decision book" Page IV-1)

DCI Recommendation: Revision is needed. Classification and declassification standards in the existing Executive Order (E.O. 11652) need clarification and simplification. In addition, the order essentially provides for protecting documents rather than information, which results in a myriad of problems of implementation.

31. If the current classification system is to be revised, should its revision be accomplished by Executive Order or statute? (Presidential "decision book" Page IV-2)

DCI Recommendation: By Executive Order, not by statute. The classification system exists to protect information originating in or coming into the hands of the Executive Branch of the Government, information in the areas (national defense and foreign relations) that under the Constitution are matters with Presidential powers. Conceptually, therefore, the Executive Branch must retain the authority to determine the need for protection of such information and the standards, procedures, etc., for doing so.

32. Should the Administration propose revised legislation to protect classified information? (Presidential "decision book" Page IV-3)

DCI Recommendation: Yes. Additional protection is needed, and although there are draft proposals in S.1 (which would revise the Criminal Code), they have caused considerable controversy and consideration is being given to not pushing these particular provisions. Legislation on the protection of intelligence sources and methods is particularly needed.

33. Whether statutory protection should be accorded only to intelligence sources and methods or to all types of classified information. (Presidential "decision book" Page IV-4)

DCI Recommendation: Statutory protection for intelligence sources and methods is strongly urged. By letter of 31 December 1975 the Department of Justice withdrew all objections to the CIA proposal. Clearly such legislation is necessary in view of the inadequacy of the current law. The present proposal has an excellent chance of passage, but should not be broadened to cover other types of classified information.

34. Whether statutory protection for classified information should cover only Government employees or also the unauthorized recipient. (Presidential "decision book" Page IV-6)

DCI Recommendation: Statutory protection certainly should cover both Government employees and other authorized recipients, such as employees of Government contractors. The draft proposals of S.1 do extend to the unauthorized recipient as well as Government employees, but including the unauthorized recipient is one of the reasons for the controversial nature of the disclosure provisions of S.1. It seems highly unlikely that inclusion of the recipient would be acceptable to the Congress.

35. What form of statutory protection should be given to classified information (i.e., criminal or civil, or both)? (Presidential "decision book" Page IV-6)

DCI Recommendation: As to classified information generally, there should be both criminal and civil injunctive provisions in law. Clearly, additional criminal sanctions are necessary because of inadequate current laws. The civil injunctive provision can in certain cases prevent disclosure rather than having criminal action taken after the damage has been done.

STATINTL

Comment: Although not addressed in the Presidential "decision book," this issue is considered of sufficient urgency to warrant specific attention.

STATINTL

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Annex B

If the President wishes to make major changes in the organization of the Community, the sequence that follows may be a useful way for him to approach the problem.

Issue: Should the role of the DCI be enhanced so as to provide more focused management and control of the Intelligence Community?

DCI Position. Yes. The DCI's responsibilities are not commensurate with his authorities. In an era when national collection systems require centralized control, the DCI must be in a position to exercise that control. If he is not given the authority to do so, then the original concept of a DCI independent of departmental interest must be modified.

Issue: Should the major intelligence budgets be appropriated to an Intelligence Community manager for reallocation to individual operating departments, or should his management be limited to the formulation of a recommended foreign intelligence budget?

DCI Position. If the DCI is to be given the responsibilities implicit in the previous question, he must have control of the funds to be effective. Such a "manager" should control funds for the CIAP, CCP, and NRP. The alternative, "recommending" a budget, may be characterized as Vice-President Garner did his vice-presidential responsibilities.

Issue: If he does not have direct budgetary control, should an Intelligence Community manager have any responsibility for approving the NSA and NRO programs and budgets?

DCI Position. Yes. I have recommended an arrangement whereby a sub-Committee of the NSC, chaired by the DCI, would exercise program and resource control over NSA and NRO. Regardless of his authorities, the DCI is and should be charged with the guidance for these programs.

Issue: Should an Intelligence Community manager be responsible for oversight and evaluation of all foreign intelligence activities, or should that remain decentralized as it is now?

DCI Position. The DCI now has these responsibilities, at least implicitly, but they are in fact decentralized. Unless his authorities are greatly strengthened, he should be relieved of any "oversight" responsibility beyond that for CIA. He can, with his present authorities, "evaluate" those foreign intelligence activities known to him, but he is in no position to make his evaluations comprehensive, nor can he expect that these evaluations will carry much weight. Thus I would vote to make him responsible for oversight and evaluation, but only on the condition that he be given the necessary authority.

Issue: Should an Intelligence Community manager be responsible for the presentation of the foreign intelligence budget even if he does not directly control it?

DCI Position: Yes. It is quite clear that Congress will expect in the future that someone present an intelligence budget. It makes sense that this should be the DCI, even if his control over major portions of it is minimal. It is important, however, that all parties--including the Congress--recognize that this would be a feckless exercise unless the DCI could in fact assure the Congress that the Executive stands behind what he presents.

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TAB C

CENTRAL INTELLIGENCE AGENCY CHARTER

1. Should the Agency have a charter?

Yes. Since CIA is an independent Agency a charter is virtually a necessity. The Agency's basic charter is the National Security Act of 1947 which created CIA. Furthermore, there is no question but that the Congress will want to modify the Agency's current statutory charter.

2. What should be included in the charter?

The charter should include: the designation of the director of the Agency and a limited number of senior deputies; the status of the director and his relationship to the President or any subordinate official having authority over him; the director's authority over or relationship to other elements of the intelligence community; the duties, authorities and responsibilities of the director and the Agency and specific provision for designation of other duties, authorities and responsibilities by administrative action; activities prohibited or restricted; general and specific exemptions from the provisions of statutes, Executive orders and regulations which would impinge upon the authorities of the director or the ability of the Agency to effectively carry out its charter responsibilities; manner of appropriation and expenditure of funds and specific authority on employment and termination of personnel.

3. Should the charter be a statute or an Executive order?

The charter should be a mixture of statute and Executive order or Presidential directive. The Congress probably will insist on a good part of the Agency's charter being clearly defined in law. In addition, however, as with many statutes some flexibility is desirable and this will assist the President in modifying the Agency's charter from time to time within the framework of the statute as there are new developments and circumstances. In addition, there are certain classified aspects which can only be dealt with by Presidential directive due to subject matter and the details necessarily involved in certain sensitive matters.

NATIONAL RECONNAISSANCE OFFICE CHARTER

1. Should the NRO have a charter?

Yes. Satellite reconnaissance of foreign activities is essential to meet Intelligence Community needs at the national level. An organization is required to manage the necessary effort and a comprehensive charter is essential to define, authorize, and establish that organization.

2. What should be included in the charter?

The charter should define the supervision under which the national office is established, the responsibility and authority of that national office, and its relationships to the Department of Defense and the Central Intelligence Agency.

The NRO charter should enable the organization to implement responses to both national and tactical intelligence requirements. The charter should provide for the development and operation of satellite collection systems which deliver the necessary product to the exploitation, analytical, tactical and field command elements in the most responsive manner and with appropriate security provisions.

The authority of the NRO should include:

- a. Establishment of its necessary management structure;
- b. Definition of the required budgetary support;
- c. Development and operation of the satellite systems;
- d. Technology support for future efforts.

3. Should the charter be a statute or an Executive Order?

The classification ~~of the fact~~ of satellite reconnaissance and the existence of the NRO as well as the need for flexibility as new requirements for satellite reconnaissance emerge (as is currently the case with direct military support requirements) dictate that the charter be established through Executive Order rather than statute.

ATTACHMENT A

Option 4, Modified - "Collective Management"

RATIONALE

This Option starts from the premise that stronger management of the Intelligence Community is highly desirable, but that the balance of interests reflected in the present structure is a realistic one and should be maintained. It presents a concept for achieving a degree of collective management while preserving present organizational relationships. It requires a minimum of legislative change.

SUMMARY DESCRIPTION

The DCI would continue to be advisor to the President, coordinator of the Community, and Director of CIA. The present structure of Committees and Boards would be consolidated into two, both chaired by the DCI: an Executive Committee of the NSC for Intelligence at the deputy secretary level, responsible for all Community management and policy matters, and a National Intelligence Board at the present USIB Principals level, responsible for substantive production. To enable the DCI to give more attention to his Community responsibilities he would be provided with a second deputy.

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PRIMARY CHANGES AND EFFECTS

The DCI's Responsibilities

The DCI would be the President's chief intelligence advisor, and would remain Director of CIA. With a view to raising the stature of the job, consideration should be given to granting him Cabinet rank. He would be responsible, under the NSC, for the coordination of national intelligence policy and for the production of national intelligence. A clear distinction would be made, however, between his Community and CIA roles.

To this end, he would be provided with an additional Deputy, appointed by the President and confirmed by Congress. The present Deputy would be specifically responsible for managing the Agency under the DCI; the other Deputy would be responsible under the DCI for coordination of the Community. The DCI would have an Agency office at Langley and a Community office downtown, where his Community Deputy would be located.

Coordination of National Intelligence

The present structure of boards and committees would be rationalized, on the basic principle that policy and resource matters requiring a balancing of departmental interests would be considered collectively by the senior officers controlling the assets and resources concerned. A separate forum would be provided for substantive intelligence issues, on the grounds that these are inappropriate for policy officers to adjudicate and that departmental interests are protected by the right of dissent.

Policy and Resources

For the first of these purposes the DCI would chair an NSC Executive Committee for Intelligence, with Deputy Secretaries of State and Defense as members. The committee would have under control of its members all important intelligence assets, and would act as a board of directors for national intelligence. EXCOM(I) would absorb the functions of NSCIC, EX-101 (NRO plus equivalent responsibilities for NSA), INAC, and USIB (except national intelligence production). It would in addition coordinate policy matters affecting State and the Community, [redacted] technical collection bases overseas, and intelligence agreements with foreign countries.

STATINTL

The DCI's Community Deputy would be his alternate in EXCOM(I) but would not serve as Chairman in his absence. The IC Staff would be the secretariat of EXCOM(I). The DCI would carry out his existing responsibilities for the NFIP (less its tactical and departmental components) with the assistance of the Committee. EXCOM(I) would have approval authority for the NFIP (CIAP, NRP, CCP, and some elements of the GDIP) and its decisions would be binding. The DCI would have administrative and resource authority only over CIA. Present administrative arrangements for the NRP and CCP would be preserved.

Production of National Intelligence

USIB would be reconstituted as a National Intelligence Board, limited by charter to substantive matters, and advisory to the DCI. The NIO's would act as the DCI's staff for the NIB. The Board would be chaired by the DCI, with his Agency Deputy as CIA member. The latter would serve as Chairman in his absence.

Covert Action

The DCI would be a member of the 40 Committee, but not its Chairman, with his Agency Deputy as alternate. Clandestine collection and covert action would remain assigned to CIA, without change in present arrangements.

Oversight

Without administrative authority over the Community, it would be inappropriate for the DCI to have an IG responsibility except over CIA. This Option assumes Executive oversight at the NSC or White House level.

Congress

The DCI would continue to be the Community spokesman to Congress.

National/Tactical Problems

EXCOM(I) would handle matters relating to the relationship between tactical and national intelligence. The DCI would have no responsibility for the tactical intelligence budgets of the military services.

STATINTL

Activity 4: CIA requires continued authority for trainees to attend training courses given by other Government organizations (including law enforcement organizations) and private institutions as overt Agency employees

[REDACTED]

STATINTL

Impact of Restriction: A general prohibition against sending Agency employees to other Government organizations for training would have a fairly serious impact on the qualifications of our personnel. In some instances, for example, language training, attendance at another training establishment of the U.S. Government is part of the process of [REDACTED]

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[REDACTED] In some instances such training represents the only feasible way for the individual to develop necessary skill or gain required knowledge. A more narrow prohibition against receiving training from law enforcement organizations would have a somewhat less serious impact. At the present time, Office of Security employees take courses at the National Center of Lie Detection and small numbers of Operations Directorate personnel have taken training given by law enforcement organizations.

STATINTL

A prohibition against utilizing non-Agency facilities in a [REDACTED] would have a serious impact on the Operations Directorate and by several DDA and DD/S&T components. Such a restriction would impact on operational needs and the career development of our employees. At the present time approximately one-third of our external training is handled as [REDACTED]

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Activity 5: CIA requires continued authority to train employees of other U.S. Governmental agencies in foreign intelligence and counter-intelligence techniques.

Impact of Restriction: Inter-agency training, an important ingredient in the development of a common understanding of intelligence work within the Intelligence Community, is an important aspect of a more efficient U.S. foreign intelligence effort. Prohibition of such training, for example, would have the effect of making U.S. Government officials who travel abroad more vulnerable to recruitment and entrapment efforts by hostile intelligence organizations.

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Other DDI components would be less affected insofar as collection is concerned, unless the limitation were so extreme as to preclude normal research from open sources.

Evaluation, correlation, and analysis by DDI production components would be hurt to some extent by a proscription on using open source information on United States citizens. OER's analysis of foreign and international economic development would be particularly hard hit.

Activity 12: CIA requires continued authority to collect or obtain information abroad from or about a United States citizen in the course of an authorized foreign intelligence or foreign counterintelligence activity.

Impact of Restriction: Any restriction of DDO authority to obtain information abroad concerning a U.S. citizen in the course of authorized FI or CI activity would be highly damaging, and would have a particularly serious effect on DDO's counterintelligence effort.

Activity 13: Although no operational or analysis project will be undertaken specifically to cover the foreign economic activities of a particular United States citizen or firm, CIA requires continued authority to include analysis of the roles of United States firms in reports on and studies of foreign economic activities. CIA also requires continued authority to include information on United States citizens who are politically active in a foreign country or who are employees or agents of a foreign government in CIA reports or analysis if it bears on the political and economic life of that country or its foreign relations.

Impact of Restriction: There have been occasions in which United States citizens or dual citizens were key elements in the political or economic life of a foreign country. Avoiding mention of the role of these individuals would result in distorted, artificial reporting.

Activity 14: CIA requires continued authority to collect, evaluate, correlate, and analyze information on United States citizens to determine the fitness, suitability, and credibility of such persons to become or remain employed by or associated with CIA. When necessary for security reasons such personnel security investigations must be conducted without revealing CIA or United States Government interest.

Impact of Restriction: The collection and processing of such information is to ensure the security acceptability and suitability of the individuals for access to classified information and/or intelligence operations. The need exists both before and during the individual's tenure of Agency association. Without this capability, the Agency would lose control of the security access approval actions, and in sensitive cases where Government interest in the individual must be concealed, would lose all investigative capability.

Activity 15: CIA requires continued authority to polygraph United States citizens and other individuals who are applicants for employment, as well as employees or those otherwise affiliated or under consideration for affiliation with the Agency. Individuals in this category include both those to whom classified information is to be entrusted and those who will be involved in intelligence operations.

Impact of Restriction: The use of polygraph in this manner is essential not only at the initiation of the individual's relationship with the Agency, but also periodically during the tenure of that relationship, including as an aid in investigation of specific security problems. Polygraph examinations are specifically keyed to determining the individual's loyalty and suitability for involvement in intelligence operations. Probing any other matters is avoided.

Activity 16: CIA requires continued authority to undertake physical surveillance of individuals currently or formerly employed by CIA, its present or former contractors, or such contractors' employees, provided that written approval of the DCI is obtained and the surveillance is conducted for the purpose of protecting foreign intelligence sources and methods from unauthorized disclosure.

Impact of Restriction: This authority is necessary in order for CIA to conduct preliminary investigation of allegations made against our employees et al., in order to substantiate such allegations before turning the matter over to law enforcement agencies for a full investigation. Loss of this capability would also significantly impair our ability to assess the effectiveness of Agency cover arrangements.

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Activity 18: CIA requires continued authority to conduct physical surveillance of persons involved with the individuals identified in paragraphs 16 and 17 above but only to the extent necessary to identify such persons.

Impact of Restriction: This authority is needed as a practical matter to cover the period between observing such an individual and being able to turn the surveillance of that individual over to the FBI. Restriction of this limited authority would handicap counterintelligence operations.

Activity 19: CIA requires the authority to protect physically its installations and to control and restrict access to Agency sites, including authority to use its own personnel as armed guards.

Impact of Restriction: Without this authority and capability, the sensitivity of our operations and the information stored at Agency locations would not have sufficient defense against such threats as espionage, sabotage, and theft. Protection by the GSA guard force at installations which are under nonofficial cover, is not possible or appropriate.

Activity 20: CIA requires the authority to permit its professional security officers to carry firearms as follows: (a) At any time in order to protect classified information and materials; (b) When appropriate, in order to afford protective services to the Director of Central Intelligence, the Deputy Director of Central Intelligence, and other senior Agency personnel; (c) With the approval of the Director of Central Intelligence to afford protective services to Agency-sponsored foreign visitors in the United States who are either not entitled to or for operational reasons do not elect to receive protective

service from the State Department or from the Secret Service; (d) With the approval of the Director of Central Intelligence and in accordance with procedural guidelines of the Attorney General, when the occasion does not permit Federal Bureau of Investigation assistance, in order to carry out [REDACTED] in the United States.

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Impact of Restriction: At present only couriers and guards transporting confidential documents and materials may be authorized to carry firearms.

Activity 21: CIA requires continued authority to conduct physical security surveys of our installations, facilities, and other sites used in intelligence operations. This capability includes the need to survey and ensure that individuals residing or having regular access to the vicinity of the site are not individuals with hostile interests.

Impact of Restriction: Loss of this capability would prevent us from providing adequate protection to our installations and other

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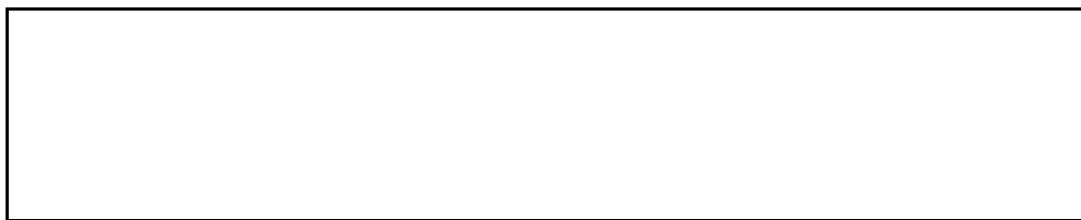
Activity 22: CIA requires continued authority to conduct technical surveillance countermeasures.

Impact of Restriction: The need to conduct such inspections and surveys [REDACTED] in order to determine whether the enemy may have penetrated our installations by technical means and to neutralize such efforts.

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Activity 23: CIA requires continued authority to maintain contact with, and seek assistance from, federal, state, and local law enforcement agencies to obtain investigative data on individuals of security interest to the Agency, to report information concerning criminal activities, to obtain help with respect to the protection of Agency personnel and facilities, to obtain information and assistance in handling terrorism problems, to gain assistance in the training of Agency personnel, and in connection with other matters permissible within the CIA charter.

Impact of Restriction: Loss of this capability would degrade our ability to properly select personnel, would deny us police support when individuals or groups attempted to penetrate or damage our installations or when our personnel were threatened or harassed. Such contact allows CIA to obtain information on the state of the art concerning counterterrorism and when necessary obtain help from specialized law enforcement agencies in handling terrorism problems directed against Agency facilities. Denial of this capability would deny us technical assistance and guidance useful in addressing terrorist problems overseas. Such contact is also useful for obtaining training for Agency personnel. Without such police assistance the training of Agency personnel preparing for overseas assignment would be seriously impaired, especially training designed to prepare personnel to cope with arrest or capture abroad by hostile elements. Such authority also allows us to fulfill our responsibility for making available to the Secret Service any information indicating a possible threat to the safety of an individual entitled to protection under 18 U.S.C. 3056 or under P.L. 90-331.

Activity 24: CIA requires continued authority to provide specialized equipment or technical knowledge for use by any other Federal department or agency.

Impact of Restriction: The denial of such an exchange capability would, among other things, significantly increase the cost of our security programs in the technical area and diminish their overall effectiveness. Collectively, Federal agencies would fall behind the state of the art in such areas as technical surveillance countermeasures and counterterrorism techniques.

Activity 25: CIA requires continued authority to make available information acquired as a by-product of CIA activities reflecting on the security suitability within the meaning of E.O. 10450 of a civilian employee of the United States Government or a member of one of the United States military services to the department or agency of which the individual is an employee or member.

Impact of Restriction: Without this capability, the security clearance process would be less than complete and decisions would have to be made on inadequate information. Less critical but also of importance is our ability to exchange information on individuals where a counterintelligence issue suggests their involvement in activities hostile to Agency personnel or operations.

Activity 26: CIA requires continued authority to make available to the FBI information acquired as a by-product of CIA activities, which concerns counterintelligence or the internal security of the United States and which pertains to a foreign national in the United States or to a United States citizen and which concerns terrorism or international trafficking in narcotics or other dangerous drugs. CIA also requires continued authority to make available to the Drug Enforcement Administration information acquired as a by-product of CIA activities which concerns international trafficking in narcotics and other dangerous drugs.

Impact of Restriction: Restriction of this authority would only indirectly handicap this Agency. However, the volume of counterintelligence information produced overseas has been of inestimable value to the FBI in the pursuit of their authorized security and counterintelligence functions within the United States. Similarly, information on terrorism and drug trafficking is of significant value to both the FBI and DEA.

Activity 27: CIA, in support of its efforts to collect foreign intelligence, requires continued authority to avail itself of such assistance and cooperation of individuals and organizations in the United States as they may agree to provide.

Impact of Restriction: Such help is extremely valuable to this Agency and a restriction in this area would have a serious effect on Agency cover arrangements, operations, and intelligence collection.

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Activity 31: The DCI requires continued authority to summarily reject an applicant or to discharge an employee.

Impact of Restriction: This is extremely important to the security of the Agency, both to avoid possible revelation of classified information in appeal hearings and to retain a capability for exercising control over the issuance of security approvals for Agency information, particularly if substantially lower clearance criteria are established in the future.

Activity 32: Legislation is required to provide criminal sanctions for the unauthorized disclosure of classified foreign intelligence information and intelligence sources and methods; to provide for effective injunctive authority; and to provide for penalties for impersonation of a CIA officer or use of the initials CIA with the intent to mislead or defraud.

Impact of Restriction: Continuation of the DCI's statutory responsibility to protect intelligence sources and methods is critical to the security of Agency operations. At present, however, this responsibility does not include any specific authority to implement that responsibility. The legislation suggested above would help the DCI to carry out his statutory responsibilities.

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Activity 35: CIA requires continued authority to engage in sole source procurement, that is procurement without public advertising and procurement without competition.

Impact of Restriction: A requirement that the Agency publicly advertise its procurement would have serious consequences. Opposition intelligence services would be able to analyze and monitor our activities and take countermeasures, procurement lead time and expense would be increased and those unfriendly to the Agency could impede sensitive Agency activities by harassment and litigation. Avoiding restriction of the Agency's ability to procure without competition is almost as important. Many of our technical efforts must be developed at the highest state of the art and put into operational use at the earliest possible date in order to retain a competitive edge over opposition countermeasures. The ability to select the most competent contractor, who can deliver in the shortest time and who can deal securely with sensitive material, is critical to maintaining technical superiority in the intelligence area.

Activity 36: CIA requires continued authority to lease, purchase and operate computers to carry out its intelligence mission, as well as for management and administrative activities which support the intelligence function, and for reporting information to other government agencies when required by law to do so.

Impact of Restriction: Legislative restriction on the Agency's computer procurement authority, delegated by the Administrator of General Services pursuant to P.L. 89-306, would have a number of adverse effects. For example, Agency ability to react quickly to requirements such as those of Division D and the Office of ELINT would be reduced, security surrounding overseas support of those components would be affected, and accommodation procurement on behalf of third parties would be very difficult.

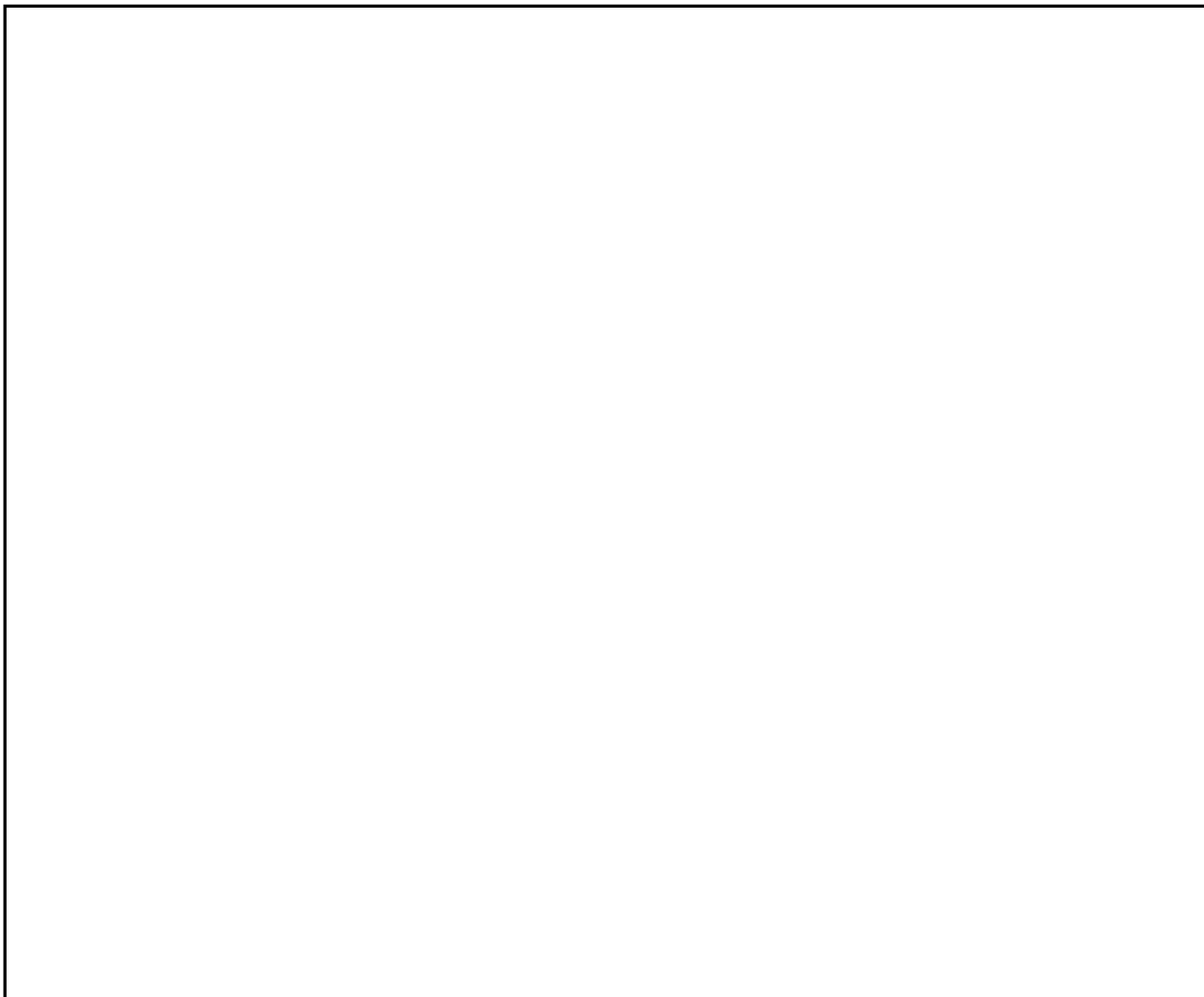
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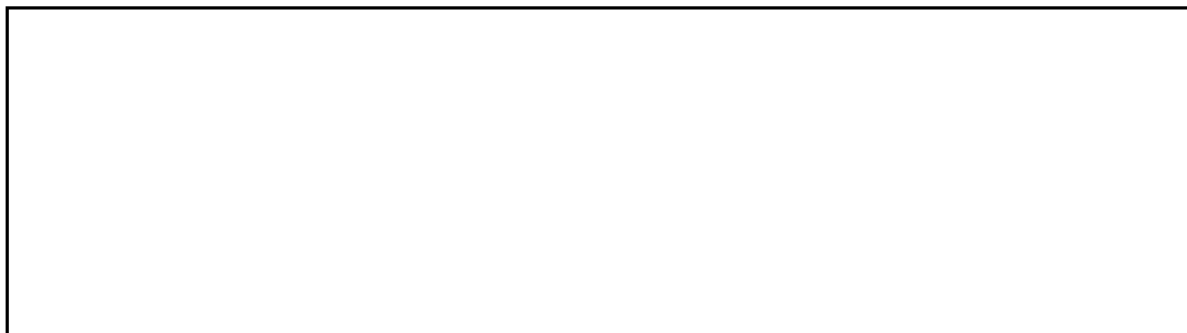
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Activity 41: CIA requires continued authority to maintain liaison relationships with foreign intelligence services.

Impact of Restriction: As a result of liaison relationships the Agency gains important intelligence information and finished intelligence as well as valuable assistance in clandestine collection and counterintelligence. Restriction of this authority would have a detrimental effect on a broad range of Agency activities.

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Activity 43: CIA requires continued authority, found in Section 8 of the CIA Act, to expend funds for purposes necessary to carry out its functions, notwithstanding any other provision of law. The Director requires continued authority to account for expenditures for objects of a confidential, extraordinary, or emergency nature solely on his certificate.

Impact of Restriction: This authority is essential because concealment of certain expenditures is necessary in order to provide security for CIA operations and to prevent opposition services from first ascertaining Agency capabilities and shifts in emphasis and then taking effective countermeasures. Such authority is also essential in order to provide needed flexibility to meet intelligence problems as they arise.

C. Agency Legislative Suggestions

If it becomes clear that explicit legislative restrictions on CIA activities are inevitable, this Agency might propose the following measures which might reassure the American people without seriously eroding the Agency's ability to carry out the statutory responsibilities.

1. The CIA shall not conduct training or furnish equipment to local law enforcement personnel or organizations in the United States.
2. The CIA shall not undertake clandestine operations in the United States directed at the collection of intelligence information on domestic affairs or the activities of United States citizens except in connection with the protection of its personnel and installations and the conduct of employee or other security investigations.

26. Should the Administration propose revised legislation to protect classified information?

Yes. Additional protection is needed and ^{ALTHOUGH} there are draft proposals in S.1, although they have caused considerable controversy and consideration is being given not to push these particular provisions.

27. Whether statutory protection should be accorded to intelligence sources and methods.

Strongly urge statutory protection for intelligence sources and methods. By letter of 31 December 1975 the Department of Justice withdrew all objections to the CIA proposal. Clearly such legislation is necessary in view of the inadequacy of current law. This has an excellent chance of passage, but should not be broadened to cover other types of classified information.

28. Whether statutory protection for classified information should cover only government employees or also the unauthorized recipient.

Statutory protection certainly should cover both Government employees and other authorized recipients, such as employees of Government contractors. The draft proposals of S.1 do extend to the unauthorized recipient as well as Government employees, but including the unauthorized recipient is one of the reasons for the controversial nature of the disclosure provisions of S.1. It seems highly unlikely that inclusion of the recipient would be acceptable to Congress.

29. What form of statutory protection should be given to classified information (i.e., criminal or civil, or both)?

a. As to classified information generally, there should be both criminal and civil injunctive provisions in law. Clearly additional criminal sanctions are necessary because of inadequate current laws. The civil injunctive provision can in certain cases prevent the disclosure rather than taking criminal action after the damage has been done.

b. There should be statutory protection for intelligence sources and methods and it should include both criminal and civil injunctive provisions. Today there are no criminal sanctions for unauthorized disclosure. While the 4th Judicial Circuit has approved an injunction to protect classified information, including intelligence sources and methods, it is quite possible that no other circuit would ~~not~~ see fit to grant injunctive relief. Both criminal and injunctive provisions are in the proposed CIA legislation.

7 January 1976

Should the existing classification system be revised? Yes.

Classification and declassification standards in the existing Executive order (Executive Order 11652) need clarification and simplification. In addition, the order essentially provides for protection of documents, rather than information, with a resulting myriad of problems of implementation.

If the current classification system is to be revised, should its revision be accomplished by (a) statute? No. (b) Executive order? Yes.

The classification system exists to protect information originating in or coming into the hands of the executive branch of the Government, information in the areas (national defense and foreign relation) which under the Constitution are matters within Presidential powers. Conceptually therefore the executive branch must retain the authority to determine the need for protection of such information and the standards, procedures, etc. for doing so.

ISSUE:

If the existing classification system is to be revised, should it be revised by statute?

ANSWER: Yes. - ~~SECRET~~ A

DISCUSSION:

A statute should be enacted assigning responsibility to the executive for establishing and maintaining a classification system to protect national security information. This statute should also establish administrative and criminal penalties for violations of the classification system established by the executive and should endorse the applicability of the classification system both throughout the federal government and the public sector.

A

ISSUE:

If the existing classification system is to be revised, should its revision be accomplished by Executive Order?

ANSWER: Yes. - *See B*

DISCUSSION:

The revised classification system should be established under legislative requirement but defined under executive responsibility. Classification system design can better be established by the executive since the President is in a better position to recognize the details of classification system implementation including the designation of what information requires protection. Further, the executive can more easily modify any system so established to meet changing requirements.

ISSUE:

If the existing classification system is to be revised, should it be revised by statute?

ANSWER: Yes. - *SEE A*

DISCUSSION:

A statute should be enacted assigning responsibility to the executive for establishing and maintaining a classification system to protect national security information. This statute should also establish administrative and criminal penalties for violations of the classification system established by the executive and should endorse the applicability of the classification system both throughout the federal government and the public sector.

24

7 January 1976

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25

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Issue No. 22

Should the production organizations of the Intelligence Community be realigned in order to improve the quality of intelligence production and analysis?

DCI Position

No. This issue is generally discussed in terms of resource savings resulting from the elimination of duplicative production arrangements. With minor exceptions the existing alignments are reflective of the proper national and departmental interests of the members of the Intelligence Community. It is imperative that the DCI provide the President, the National Security Council and the Congress with authoritative and reliable assessments of foreign events. This capability can be exercised only on the basis of analysis under the immediate control of the DCI and independent of other departments. Moreover, on critical national intelligence questions, competition in analysis is desirable and should be encouraged. The best approach to improving the quality of analysis and production is to provide the resources adequate to satisfy the full range of the substantive needs for national intelligence.

7 January 1976

ISSUE NO. 1

Should the senior U.S. foreign intelligence officer also be the operating head of the Central Intelligence Agency?

DCI POSITION

Yes. It is essential that the senior U.S. foreign intelligence officer not be separated from his operating base. If he is to be the intelligence advisor to the President, he must not be separated from the analytical base responsible for the production of national intelligence. While the DCI can be directed to delegate day-to-day management of the CIA to a Deputy, he must retain operational and policy control of the Agency or he will become a powerless "advisor" on the White House staff.

ISSUES RELATING TO THE INTELLIGENCE COMMUNITY

Is this the time to reorganize the Intelligence Community, considering that a new DCI will shortly take office and both the Secretary and Deputy Secretary of Defense are new appointees?

ROLE OF THE DIRECTOR OF CENTRAL INTELLIGENCE

If the answer to the above is affirmative, the following organizational issues need to be addressed.

1. Should the senior U.S. foreign intelligence officer also be the operating head of the Central Intelligence Agency?

2. Should the DCI be a member of the NSC, or an advisor to the NSC?

3. Should the DCI be chairman of the NSC Intelligence Committee?

4. Should the DCI be the chairman of the 40 Committee (or its equivalent)?

5. Should the DCI have responsibility for the overall management and direction of the National Security Agency?

6. Should the DCI have responsibility for the overall management and direction of the National Reconnaissance Office?

7. If not management and operating responsibility, should the DCI have any responsibility for approval of the NSA and NRO budgets?

OVERSIGHT

8. How should strengthened Executive Branch oversight of the Intelligence Community be exercised?

9. What should be the Executive Branch position, if any, with respect to Congressional Oversight of the Intelligence Community?

ISSUES RELATING SPECIFICALLY TO THE CENTRAL INTELLIGENCE AGENCY

1. Is it essential to retain a U.S. capability for covert action?
2. Should responsibility for covert action be separated from the CIA?
3. Should the CIA budget remain secret?
4. Should the GAO have responsibility for audit of CIA funds?
5. Should legislation be sought to improve protection of sensitive intelligence sources and methods?
6. What Executive Branch action can be taken to provide better cover arrangements for CIA personnel overseas?

2. DO THE COMMUNITY'S STATUTORY AND ADMINISTRATIVE CHARTERS
ADEQUATELY DEAL WITH COVERT ACTION?

Yes.

The 1947 National Security Act delegates to the NSC authority to assign certain action responsibilities related to intelligence; by the NSCID's and the implementing DCID's and Decision Memoranda, particularly NSDM-40, responsibility for the planning, approval and execution of covert action has been adequately established. The current legislative requirement to brief six Congressional committees on every covert action has proved to be so insecure that it has obstructed effective covert action, but this could be remedied by the creation of a new legislative mechanism such as a single joint Congressional committee with exclusive oversight responsibility at least for CIA.

Should a new Congressional-Executive relationship provide for greater Executive Branch accountability to Congress?

Yes. Such accountability is an essential ingredient of restoring public confidence. The Executive must work to establish relationships with committees which have exclusivity of oversight and which can operate under effective rules to assure responsible handling of sensitive information. If members of such committees are to operate in a credible fashion as surrogates for others they must receive, on a voluntary basis, sensitive information which is not available to the press, interest groups and other members of Congress.

~~SECRET~~

5. SHOULD THE JURISDICTIONAL ARRANGEMENTS BETWEEN THE CIA AND THE FBI BE REVISED?
- No.

The 1966 Letter of Agreement between the two agencies is a clear basis for effective relations between the CIA and the FBI. The pending NSCID 9 and Executive Order on Domestic Activities, which are both consistent with the 1966 agreement, spell out in greater detail some of the relationships in a useful manner. NSCID 9

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CIA's collection responsibility is and should continue to be restricted to foreign intelligence.

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CENTRAL INTELLIGENCE AGENCY CHARTER:

1. Should the Agency have a charter?

Yes. Since CIA is an inDependent Agency a charter is virtually a necessity.

The Agency's basic charter is the National Security Act of 1947 which created CIA.

2. What should be included in the charter?

The charter should include: the designation of the director of the Agency and a limited number of senior deputies; the status of the director and his relationship to the President or any subordinate official having authority over him; the director's authority over or relationship to other elements of the intelligence community; the duties, authorities and responsibilities of the director and the Agency and specific authorities for designation of other duties, authorities and responsibilities by administrative action; activities prohibited or restricted; general and specific exemptions from the provisions of statutes, Executive orders and regulations which would impinge upon the authorities of the director or the ability of the Agency to effectively carry out its charter responsibilities; manner of appropriation and expenditure of funds and specific authority on employment and termination of personnel.

6. Should substantive restrictions be placed on the activities of intelligence agencies?

Yes. An Executive order is in preparation which will prohibit or limit the activities of intelligence agencies other than the FBI. Because some of these restrictions will be directed at activities which are essential to a law enforcement agency, limitations on activities of the FBI will be handled separately. The restrictions on intelligence agencies will ~~restrict~~ ^{limit} activities directed at United States citizens; activities which may be conducted within the United States; electronic surveillance; examination of United States mail; access to Federal income tax returns; secret infiltration of organizations of U.S. citizens; human drug experimentation; participation in or support of law enforcement activities; and assignment of intelligence agency personnel to other Government agencies.

7 and 8:

Should there be exemptions to restrictions on the activities of intelligence agencies permitting them to engage in certain activities directed at United States citizens?

Yes. For example, intelligence agencies should be permitted to collect, analyze and disseminate information on the domestic activities of U.S. citizens reasonably believed to be involved in international terrorist or narcotics activities or working secretly in collaboration with a foreign nation or organization, provided such information is collected abroad or from foreign sources. They should also be permitted to share information on the domestic activities of U.S. citizens with other Federal agencies properly concerned with such activities, but only under guidelines to be issued by the Attorney General.

Issue: Should the charter of the Community institute greater accountability?

Comment: As it is treated in the President's decision book, this issue would be better stated as:
Is it desirable to move now to streamline the chain of command of the Intelligence Community?

Recommended DCI Position: No. The issues involved in organization and management of the Community are complex and need much more careful study. Moreover, both the Director of Central Intelligence and the Deputy Secretary of Defense are new to their jobs and need time to develop their own ideas. Finally, any such proposal would have to be taken to the Congress, where consideration in the present atmosphere might be destructive.

Should the President decide, however, that a major reorganization should be undertaken this year (and Congress in any case appears to be moving in that direction) then I believe the Community structure should indeed be streamlined. The authorities of the DCI should be made commensurate with his responsibilities and his

relationships with the Department of Defense should be clarified. On the other hand, the chain of command for covert action is already quite clear and I see no reason to change it.

Issue: Under what ground rules should Congress be provided substantive intelligence?

Comment: In context this issue appears to refer only to the ground rules under which Congress can make public substantive intelligence provided to it.

Recommended DCI Position: The only acceptable arrangement is that the Executive continue to control the declassification of classified substantive intelligence. This in turn requires Congressional acceptance, collectively and individually, of the Executive's security and classification system, and hence is part of the larger issue of how Congress polices itself. A provision for appeal to the President would not be inconsistent with this position.

Issue: What substantive intelligence should be sent to Congress, and what official should be responsible for making such determinations?

DCI Position: I agree with the conclusions reached in the President's decision book. Specifically, I believe that

--Legislation on this subject would raise serious constitutional questions and should be avoided.

--The Executive should give more systematic attention to the growing needs of Congress for information.

--The flow of ^{intelligence} information to Congress should be centralized under the DCI.

In what manner should the intelligence budget be displayed to Congress?

The answer to this question depends to a degree on future organizational arrangements for the Intelligence Community. If effective authority over the intelligence budget or a major portion of it were to be consolidated in the DCI, he could be held responsible for displaying and justifying all intelligence costs. If present arrangements are to be maintained, CIA, Defense, and other departments and agencies with intelligence programs will present and display budgets for their programs more or less as at present.

For some months the secrecy of the intelligence budget, particularly of the CIA portion, was at issue. With the House Appropriations Committee's vote last year, however, to maintain secrecy of the CIA budget, the question has become less urgent.

Within the present legal framework, a decision could be made to submit to the Congress a separate classified annex covering the intelligence budget. This annex would be prepared by OMB concurrently with the Federal Budget and could be made available to the appropriate committees of Congress for their consideration.

There has been some thinking within the congressional committee staffs about the possibility of having an annual or semiannual congressional authorization for intelligence appropriations. The President should not himself make such a proposal. If, however, this idea were combined with the maintenance of a secret appropriations process, some arguments advanced by proponents of an open budget would be effectively met without revealing exact budgetary details. Such a process would however have the enormous disadvantage of causing an annual congressional debate on the size and scope of the intelligence program and offer a ready-made opportunity for passage of restrictive riders on the major issue of the moment.

CENTRAL INTELLIGENCE AGENCY CHARTER:

1. Should the Agency have a charter?

Yes. Since CIA is an independent Agency a charter is virtually a necessity.

The Agency's basic charter is the National Security Act of 1947 which

created CIA. Furthermore, there is no question but that the Congress will want to ^{MODIFY} add to the Agency's current statutory charter.

2. What should be included in the charter?

The charter should include: the designation of the director of the Agency and a limited number of senior deputies; the status of the director and his relationship to the President or any subordinate official having authority over him; the director's authority over or relationship to other elements of the intelligence community; the duties, authorities and responsibilities of the director and the Agency and specific ^{primary} authorities for designation of other duties, authorities and responsibilities by administrative action; activities prohibited or restricted; general and specific exemptions from the provisions of statutes, Executive orders and regulations which would impinge upon the authorities of the director or the ability of the Agency to effectively carry out its charter responsibilities; manner of appropriation and expenditure of funds and specific authority on employment and termination of personnel.

3. Should the charter be a statute or an Executive Order?

The charter should be a mixture of statute and Executive order or Presidential directive. The Congress, and probably the American people, will insist on a good part of the Agency's charter being clearly defined in law. In addition, however, as with many statutes some flexibility is desirable and this will assist the President in modifying the Agency's charter from time to time within the framework of the statute as there are new developments and circumstances. In addition, there are certain classified aspects which can only be dealt with by Presidential directive due to subject matter and the details necessarily involved in certain sensitive matters.

The NRO

1. Question - Should the NRO have a charter?

Discussion - Yes. Satellite reconnaissance of foreign activities is essential to meet intelligence community needs at the national level. An organization is required to manage the necessary effort and a comprehensive charter is essential to define, authorize and establish that organization.

The NRO charter should be the medium to implement the response to intelligence requirements as defined by USIB and those military needs determined by the JCS. The charter should provide for the development and operation of satellite intelligence and collection systems which deliver the necessary product to the exploitation, analytical, tactical and field command elements in the most responsive manner, with the necessary security provisions and considerations.

2. Question - What should be included in the charter?

Discussion - The charter should define the supervision under which the national office is established, and the responsibility and authority of that national office. *and its relationship to CIA + Dept of Def.*

The supervision of the NRO should be provided by the user organization managers, the Director of Central Intelligence and the designated representative of the Secretary of Defense

as members of the Executive Committee. Advisors to the Ex Com should be utilized as necessary.

The authority of the NRO should include:

1. Establishment of its necessary management structure;
2. Definition of the required budgetary support;
3. Development and operation of the satellite systems;
4. Technology support efforts for future ~~efforts~~ ^{system} efforts.

The Director of the NRO should utilize the necessary resources and facilities to produce the intelligence material in a responsive manner within the necessary security requirements.

The Director of the NRO should report on a timely basis to the ExCom the status of all programs and activities under his management.

3. Question - Should the charter be a statute or an Executive Order?

Discussion - The classification of the NRO and the need for flexibility as new requirements for satellite reconnaissance emerge (as is currently the case with direct military support requirements) dictate that the charter be established through Executive Order rather than statute.

Categories of Issues

1. Is there a need to reorganize the Intelligence Community?

1, 3, 13, 19, 20, 21, 22

2. The scope and control of Covert Action.

2, 12, 23

3. The need for statutory or administrative restrictions on Intelligence Activities.

5, 6, 7, 8

4. The need to define systems of Oversight -- Executive, Legislative and Public.

4, 9, 10, 11, 14, 18 15

5. Intelligence support to the Congress.

16, 17

6. The need to revise systems for classification and the protection of sources and methods.

24, 25, 26, 27, 28, 29 30

Need for an Intelligence Establishment.

1. Is it now appropriate to maintain an intelligence organization of the size and scope of the current one?

Need for Change.

2. Should changes to current intelligence community organization be made?
3. Is this the proper time to undertake its reorganization?

Mechanisms of Change.

4. Should presidential initiatives at reorganization include at this time legislative changes?
5. What stance should the Presidency take with regard to Congressional initiatives for legislative change?

Oversight of Community.

6. Vail #8
7. Vail #9
8. Vail #10
9. Vail #13
10. Vail #11 and #12
11. Vail #17

Enabling Intelligence Operations in an Open Society.

12. Are initiatives necessary to better protect the security of intelligence operations?
- 13.-18. Vail #23-#28.

Intelligence Community Organization.

19. Should the role of the DCI be enhanced so as to provide more focused management and control of the Intelligence Community?

20. Should the major intelligence budgets be appropriated to an Intelligence Community manager for reallocation to individually operating departments, or should his management be limited to the formulation of a recommended foreign intelligence budget?

21. If he does not have direct budgetary control, should an Intelligence Community manager have any responsibility for approving the NSA and NRO programs and budgets?

22. Should an Intelligence Community manager be responsible for oversight and evaluation of all foreign intelligence activities, or should that remain decentralized as it is now?

23. Should an Intelligence Community manager be responsible for the presentation of the foreign intelligence budget even if he does not directly control it?

24. Is the reallocation of collection responsibilities needed to improve the effectiveness of the intelligence community?

25. Vail #20

26. #22

27. #21 (Production)

28. Should the level of duplication within the IC in intelligence analysis and production be maintained?

29. Should changes be made to the procedures now used in the preparation of National Intelligence Estimates?

30. Are better mechanisms needed for the coordination of intelligence production?

31. Vail #15

32. #16

CIA

33. Should the DCI (or IC Manager) be the operating head of the Central Intelligence Agency?

34. Should a capability for undertaking covert action be maintained?

35. #22

36. Should clandestine collection activity continue to be centralized in the CIA?

37. #4

38. Should CIA continue to play a major role in technical collection activities.

39. Etc.

ISSUES FOR PRESIDENTIAL CONSIDERATION RELATING TO U.S.
FOREIGN INTELLIGENCE ACTIVITIES

NOTE: The following includes, and expands considerably upon,
the issues contained in the Presidential "decision book"
prepared for use at Vail, Colorado.

FIRST ORDER ISSUES

1. Is this the time for a major reorganization of the Intelligence Community on initiative of the Executive Branch?

DCI Recommendation: No. A new DCI will shortly take office and both the Secretary of Defense and his Deputy Secretary handling intelligence matters are new appointees. These officials should be allowed time to examine the issues and make their recommendations to the President.

2. If the decision on the above issue is "No", should Executive Branch positions be prepared against the event that the Congressional investigations will result in reorganization proposals?

DCI Recommendation: Yes. Staffing actions should continue concerning reorganization proposals. Issues which do not involve reorganization should be decided and appropriate Executive Branch action taken.

3. *What action* How can Executive Branch, *unilateral aid in Vietnam* Congressional, and public confidence in the U.S. Foreign Intelligence Community best be restored?

As a first step
DCI Recommendation: Restrictions on the Intelligence Community such as are contained in the draft Executive Order which has been under White House review will contribute to restoration of confidence. (Issuance of the Executive Order should be deferred until clear indication can be obtained as to whether a similar directive is to be approved by the Congress.) The constraints put on intelligence activities should be in accordance with limitations posed not only by the U.S. Constitution but also by U.S. mores and the present political climate.

The following issues are organized by category. Issues from the Presidential "decision book" are not listed in the same order in which they appear in the Presidential "decision book."

MANAGEMENT OF THE INTELLIGENCE COMMUNITY

4. How should accountable leadership of the Intelligence Community be provided?

(Presidential "decision book" phrased this: "What type of leadership does the Intelligence Community require (both internally and externally) to efficiently provide quality leadership on a timely basis? Which person or persons shall be held accountable for leadership of the Intelligence Community?" (Page III-1))

DCI Recommendation: Leadership must be provided by two persons: the President and his senior U.S. foreign intelligence officer, who must function both as a close advisor to the President and as an Intelligence Community leader with authority which matches his responsibilities. This authority must include sufficient budgetary authority to make his leadership effective.

5. Should the senior U.S. foreign intelligence officer also be the operating head of the Central Intelligence Agency?

DCI Recommendation: Yes. It is essential that the senior U.S. foreign intelligence officer not be separated from his operating base. If he is to be the intelligence advisor to the President, he must not be separated from the analytical base responsible for the production of national intelligence. While the DCI can be directed to delegate day-to-day management of the CIA to a deputy, he must retain operational and policy control of the Agency or he will become a powerless "advisor" on the White House staff.

4 UNINFORMED

6. Should the DCI be a member of the NSC, or an advisor to the NSC?

DCI Recommendation: An advisor to the NSC.

7. Should the DCI be the Chairman of the NSC Intelligence Committee?

DCI Recommendation: No.

8. Should the DCI be the Chairman of the 40 Committee (or its equivalent)?

DCI Recommendation: No, he should continue to be a member as at present.

9. Should the DCI have responsibility for the overall management and direction of the National Reconnaissance Office?

DCI Recommendation: No, although he should participate in development of the NRO program and budget and be responsible for statement of the requirements against which the NRO works.

Is oversight within the Intelligence Community adequate and effective? (Presidential 'Decision Book' - Page II-12)

DCI Comment: Not as regards Community-wide oversight with respect to possible improprieties since each organization of the Community is responsible for its own Inspector General activities and there is no Community IG mechanism. Oversight as regards budgetary matters and in the field of intelligence production is considered adequate.

Does . effective oversight call for a mechanism outside the Intelligence Community to advise the President on propriety? (Presidential "Decision Book" - Page II-13)

DCI Recommendation: No. Issuance of the proposed Executive Order on restrictions applicable to the Intelligence Community or some similar Congressional action could provide the framework for effective Intelligence Community action within the various elements of the Intelligence Community including clear provision for reporting to the Attorney General on any instances of impropriety.

Would public confidence in Executive oversight be enhanced by use of non-government overseers? Should an outside advisory board be given intelligence oversight responsibilities and if so, should it be the PFIAB? (Presidential 'Decision Book' - Page II-15)

DCI Recommendation: Yes, preferably using the PFIAB. Membership of the Board should be expanded and diversified. This should be coupled with providing greater public awareness of the Board and its activities. Additional public oversight is not considered either necessary or desirable.

NO.

To what extent is public oversight appropriate? (Presidential
"Decision Book" - Page II-27)

DCI Recommendation: ^{by Congress} Public oversight, beyond that which can
~~be provided by a group such as the President's Foreign Intelligence~~
~~Advisory Board~~, is not considered either appropriate or needed.

What mechanism would best provide control over intelligence resources? (Presidential "Decision Book" - III-7)

could be DCI Recommendation: *Given present community org, control*
~~No basic change from existing DCI~~
~~responsibilities is considered necessary, other than~~ to establish an
EXCOM chaired by the DCI and charged with the responsibility of
policy overview and resource review of the Consolidated Cryptologic
Program and the CIA activities. The EXCOM chaired by the DCI
for the National Reconnaissance Program should continue. The use
of Executive Committees avoids the need for any basic change in
the present procedures for budgetary development within the Department
of Defense and still gives the DCI a voice in the program and budget
for the major technical collection systems.

Program
~~Recomm~~ *recomm decision*

Should the collection organizations be consolidated to improve quality, simplify management, and achieve greater cost effectiveness? (Presidential "Decision Book" - Page III-9)

DCI Recommendation: No. The advantages of the expertise in the separate organizations responsible for SIGINT, satellite, imagery, and human source collection might well be lost in any consolidation with consequent reduction in responsiveness. The separate nature of the technical collection tasks and the human source collection efforts are such that greater cost effectiveness could not be expected. Ongoing improvements in the requirements systems should enable improvements in responsiveness and a more effective overall effort.

There are decided advantages in

Issue: Should the charter of the Community institute greater accountability?

Comment: As it is treated in the President's decision book, this issue would be better stated as:
Is it desirable to move now to streamline the chain of command of the Intelligence Community?

Recommended DCI Position: No. The issues involved in organization and management of the Community are complex and need much more careful study. Moreover, both the Director of Central Intelligence and the Deputy Secretary of Defense are new to their jobs and need time to develop their own ideas. Finally, any such proposal would have to be taken to the Congress, where consideration in the present atmosphere might be destructive.

Should the President decide, however, that a major reorganization should be undertaken this year (and Congress in any case appears to be moving in that direction) then I believe the Community structure should indeed be streamlined. The authorities of the DCI should be made commensurate with his responsibilities and his

relationships with the Department of Defense should be clarified. On the other hand, the chain of command for covert action is already quite clear and I see no reason to change it.

Issue: Under what ground rules should Congress be provided substantive intelligence?

Comment: In context this issue appears to refer only to the ground rules under which Congress can make public substantive intelligence provided to it.

Recommended DCI Position: The only acceptable arrangement is that the Executive continue to control the declassification of classified substantive intelligence. This in turn requires Congressional acceptance, collectively and individually, of the Executive's security and classification system, and hence is part of the larger issue of how Congress polices itself. A provision for appeal to the President would not be inconsistent with this position.

Issue: What substantive intelligence should be sent to Congress, and what official should be responsible for making such determinations?

DCI Position: I agree with the conclusions reached in the President's decision book. Specifically, I believe that

- Legislation on this subject would raise serious constitutional questions and should be avoided.
- The Executive should give more systematic attention to the growing needs of Congress for information.
- The flow of information to Congress should be centralized under the DCI.

CENTRAL INTELLIGENCE AGENCY CHARTER:

1. Should the Agency have a charter?

Yes. Since CIA is an inDependent Agency a charter is virtually a necessity. The Agency's basic charter is the National Security Act of 1947 which created CIA.

2. What should be included in the charter?

The charter should include: the designation of the director of the Agency and a limited number of senior deputies; the status of the director and his relationship to the President or any subordinate official having authority over him; the director's authority over or relationship to other elements of the intelligence community; the duties, authorities and responsibilities of the director and the Agency and specific authorities for designation of other duties, authorities and responsibilities by administrative action; activities prohibited or restricted; general and specific exemptions from the provisions of statutes, Executive orders and regulations which would impinge upon the authorities of the director or the ability of the Agency to effectively carry out its charter responsibilities; manner of appropriation and expenditure of funds and specific authority on employment and termination of personnel.

6. Should substantive restrictions be placed on the activities of intelligence agencies?

Yes. An Executive order is in preparation which will prohibit or limit the activities of intelligence agencies other than the FBI. Because some of these restrictions will be directed at activities which are essential to a law enforcement agency, limitations on activities of the FBI will be handled separately. The restrictions on intelligence agencies will restrict: activities directed at United States citizens; activities which may be conducted within the United States; electronic surveillance; examination of United States mail; access to Federal income tax returns; secret infiltration of organizations of U.S. citizens; human drug experimentation; participation in or support of law enforcement activities; and assignment of intelligence agency personnel to other Government agencies.

7 and 8:

Should there be exemptions to restrictions on the activities of intelligence agencies permitting them to engage in certain activities directed at United States citizens?

Yes. For example, intelligence agencies should be permitted to collect, analyze and disseminate information on the domestic activities of U.S. citizens reasonably believed to be involved in international terrorist or narcotics activities or working secretly in collaboration with a foreign nation or organization, provided such information is collected abroad or from foreign sources. They should also be permitted to share information on the domestic activities of U.S. citizens with other Federal agencies properly concerned with such activities, but only under guidelines to be issued by the Attorney General.

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